

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DONG O. CHUNG,

Plaintiff,

v.

Civil Action No. 07-139-

JOHN E. POTTER, POSTMASTER
GENERAL, UNITED STATES POSTAL
SERVICE,

Defendant,

ANSWER

Defendant, John E. Potter, Postmaster General, United States Postal Service, by and through the undersigned counsel, and in response to each numbered paragraph of the Complaint state as follows:

1. Admitted.
2. Admitted.
3. Denied. The averments contained in paragraph 3 of Plaintiff's Complaint concerning jurisdiction are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, Defendant denies them except to admit that Plaintiff purports to bring this action pursuant to the statutory provisions cited. Defendant also admits that a Final Agency Decision was issued on December 12, 2006.

FACTS

4. Admitted.

5. The averments contained in paragraph 5 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

COUNT I

Violation of the Racial and National Origin Discrimination Provisions of Title VII

6. Defendant hereby incorporates by reference the responses contained in paragraphs 1 through 5, *supra*, as though fully set forth herein.

7. The averments contained in paragraph 7 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

8. The averments contained in paragraph 8 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

9. The averments contained in paragraph 9 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied

COUNT II

Violation of Retaliation Provision of Title VII

10. Defendant hereby incorporates by reference the responses contained in paragraphs 1 through 9, *supra*, as though fully set forth herein.

11. The averments contained in paragraph 11 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

12. The averments contained in paragraph 12 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

COUNT III

Violation of the Racial and National Origin Discrimination Provisions of Delaware Code

13. Defendant hereby incorporates by reference the responses contained in paragraphs 1 through 12, *supra*, as though fully set forth herein.

14. The averments contained in paragraph 14 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

15. The averments contained in paragraph 15 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

The allegations in the Complaint after the word "WHEREFORE" constitute Plaintiff's prayer for relief to which no response is required. To the extent, however, the aforementioned paragraph may be deemed to set forth allegations of material fact, they are denied.

WHEREFORE, Defendant, John E. Potter, Postmaster General, United States Postal Service, respectfully requests that judgment be entered in its favor and against Plaintiff together with costs and disbursements and such other and further relief as the Court may deem just and proper.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed in whole or in part, to exhaust his administrative remedies.

THIRD AFFIRMATIVE DEFENSE

All actions taken by Defendants with respect to Plaintiff's employment were for legitimate business reasons.

FOURTH AFFIRMATIVE DEFENSE

Title VII is the exclusive means by which a federal employee can challenge employment actions; therefore, plaintiff's claims of discrimination under the Delaware Code should be dismissed with prejudice.

Defendant avers that Plaintiff is not entitled to any relief whatsoever. Defendant denies each and every allegation of the Complaint that has not been otherwise admitted, denied, or qualified.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

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Dated: September 5, 2007

CERTIFICATE OF SERVICE

I, Patricia C. Hannigan, hereby certify that on **September 5, 2007**, I electronically filed the foregoing **ANSWER** with the Clerk of Court using CM/ECF. Notification of the filing and copies of the ANSWER will be sent via First Class United States Mail, to be served upon *Pro Se* Plaintiff at the following address:

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